

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: INTERSTATE POWER AND LIGHT COMPANY	DOCKET NO. E-21686
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**ORDER CANCELING HEARING, ACCEPTING COMPROMISE,
AND ASSESSING CIVIL PENALTY**

(Issued September 15, 2004)

On July 21, 2004, the Utilities Board (Board) ordered Interstate Power and Light Company (IPL) to appear on September 23, 2004, to show cause why civil penalties should not be imposed for alleged violations of Iowa Code chapter 478. IPL filed a motion for compromise on September 2, 2004. In the motion, IPL acknowledged that it is subject to the imposition of civil penalties as a result of its actions in beginning construction on a 69 kilovolt (69,000 volt) electric transmission line located outside the city limits of Iowa Falls without obtaining a franchise from the Board. IPL asked that the show cause hearing scheduled for September 23, 2004, be cancelled and that the Board determine and assess, without hearing, an amount of civil penalty it deems appropriate.

The events leading to the July 21, 2004, show cause order, from information filed by IPL and obtained by the Board's staff, are as follows. In Docket No. E-21635, the Board granted IPL a franchise on December 31, 2003, for 2.65 miles of electric transmission line located outside of Iowa Falls. Other parts of the line were to be

located inside the corporate limits of Iowa Falls, so no franchise was required for those parts. During a field inspection by the Board's staff of a nearby pipeline project, questions were raised regarding the transmission line's location because of its proximity to a pipeline project. Subsequently, on July 6, 2004, IPL notified the Board's Safety and Engineering Section that it had changed the location of a segment of the electric transmission line. As originally planned, the segment in question did not require a franchise because it was located inside the corporate limits of Iowa Falls. By moving the line segment from the north side of the road to the south side, it went from inside to outside the corporate limits and a franchise is required, pursuant to Iowa Code § 478.1. IPL apparently became aware of the necessity for a franchise when it was obtaining information to respond to Board staff inquiries, which were not related to a possible franchise violation.

Upon discovering the situation, IPL ceased construction on the segment. One concrete pole foundation had been placed before construction halted. IPL representatives indicated to Board staff that the line location was changed because of the difficulty of obtaining easements on the north side of the road, inside the municipal boundaries. On July 8, 2004, IPL filed a petition for franchise for the segment, identified as Docket No. E-21686, and requested a temporary construction permit. The Board approved the temporary construction permit on July 21, 2004.

The Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a statement on September 8, 2004, stating that it did not object to the motion for compromise. Consumer Advocate suggested a civil penalty be imposed

that “is calculated to assure that utilities and utility regulatory authorities appreciate the fundamental importance adhering to the approved location of a permitted transmission line.”

Iowa Code chapter 478 governs the franchise of electric transmission lines.

Iowa Code § 478.1 provides, in part:

A person shall not construct, erect, maintain, or operate a transmission line, wire, or cable which is capable of operating at an electric voltage of sixty-nine kilovolts or more along, over, or across and public highway or grounds outside of cities for the transmission, distribution, or sale of electric current, without first procuring from the utilities board within the utilities division of the department of commerce a franchise granting authority as provided for in this chapter.

Chapter 478 does not allow construction to proceed absent the granting of a franchise, unless a temporary construction permit is obtained from the Board. It is clear that once the location of the line was moved to outside the corporate limits of Iowa Falls, a franchise is required.

IPL’s motion to compromise was accompanied by an affidavit by David J. Hingtgen, Manager of Real Estate and Right-of-Way for IPL. In both the motion and affidavit, IPL accepted responsibility for the error and said that all construction activities halted immediately upon discovery of the necessity for a franchise. IPL said it had previously taken steps to avoid such problems and that each task for a particular project has been identified for utilization of project management techniques. This process identifies the task of notification of the franchise group regarding final route, design specifications, etc., and includes process flowcharts and individual

project schedules. According to Mr. Hingtgen, the task was performed on this project but the final route provided to the group failed to note that 0.5 miles had been relocated from the north to the south side of the road.

Iowa Code § 478.29 provides that "[a] person who violates a provision of this chapter is subject to a civil penalty, which may be levied by the board, of not more than one hundred dollars per violation or one thousand dollars per day for a continuing violation, whichever is greater." The provisions of Iowa Code chapter 478 are designed to safeguard the interests of ratepayers, adjoining landowners, and the public generally by providing that, before granting a franchise, the Board must determine, among other things, that the proposed line is necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. Iowa Code § 478.4. Any person whose rights may be affected may object to the proposed franchise. Iowa Code § 478.5.

Section 478.29 also provides that the Board may compromise any civil penalty. The statute states:

Any civil penalty may be compromised by the Board. In determining the amount of the penalty, or the amount agreed upon in compromise, the board shall consider the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation.

The Board has recently dealt with two other cases involving violations of Chapter 478. Both were resolved when the Board granted a motion for compromise filed by the utility. Civil penalties were imposed in each case. In the first, the Board

found that the utility began construction of an electric transmission line without first obtaining a franchise. Board staff discovered the violation and the utility immediately ceased construction upon notification of the violation. A civil penalty of \$600 was imposed. Corn Belt Power Cooperative, “Order Canceling Hearing, Accepting Compromise, and Assessing Civil Penalty,” Docket No. E-21570 (2/1/02).

The second case involved the same utility. The utility converted 0.5 miles of single circuit to double circuit line without first filing a petition for amendment to electric franchise or obtaining a franchise. The utility discovered the omission itself and immediately reported it to Board staff. A civil penalty of \$300 was imposed.

In its order approving that compromise, the Board “put[] all companies on notice that franchise requirements must be followed.” The Board recognized that there could be violations that occurred many years ago and noted that any such violations would likely be self-reported and not discovered by the Board’s staff. The Board also said all companies should examine their processes “to see if additional personnel or training are needed to ensure future compliance with Iowa statutes and Board rules.” Corn Belt Power Cooperative, “Order Canceling Hearing, Accepting Compromise, and Assessing Civil Penalty,” Docket No. E-21519 (8/28/03), p. 5.

IPL’s violation falls somewhere in the middle between the other two recent violations as far as its severity. The violation was not as serious as the first Corn Belt violation, construction without a franchise, but it was not a self-reported violation like the second case because IPL apparently did not discover the error until after Board staff inquiries unrelated to the possible franchise violation.

In this case, IPL immediately ceased construction activities after the problem was identified. IPL's motion and affidavit accept full responsibility for the violation and, in fact, ask the Board to impose the appropriate penalty without hearing. IPL's affidavit identifies additional steps it is taking to avoid such problems in the future, including implementation of a preconstruction conference process, reporting of all route changes by the right-of-way representative, and a final review by the franchise coordinator, right-of-way representative, and construction personnel prior to commencement of construction. Finally, the Board has no record of any prior show cause proceedings involving IPL and transmission line construction.

While the Board is pleased with the steps IPL has taken to avoid future violations, it is apparent that IPL did not adequately examine its processes after the warning the Board issued to all companies in the August 28, 2003, Corn Belt order. The Board is serious about obtaining compliance with these requirements. All companies should examine their processes and are put on notice that future violations that are not self-reported could result in significantly higher penalties.

The Board will accept the motion for compromise and cancel the show cause hearing scheduled for September 23, 2004. The Board will, pursuant to the motion for compromise, proceed to impose civil penalties without hearing. The Board believes IPL's actions were the result of lack of oversight and inadvertence and were not done intentionally.

While the Board finds the violation to be serious, IPL's actions are mitigated by the fact it immediately ceased construction. IPL has also accepted responsibility for

the violation and taken corrective action so similar violations will not occur in the future. In imposing the penalty, the Board explicitly takes into consideration the warning previously given to all companies building transmission lines to review their processes. Based on all the facts and circumstances of this case, the Board will impose a civil penalty of \$1,000.

IT IS THEREFORE ORDERED:

1. The motion for compromise filed by Interstate Power and Light Company on September 2, 2004, is accepted and, therefore, the show cause hearing scheduled for September 23, 2004, is cancelled.

2. Pursuant to Iowa Code § 478.1, Interstate Power and Light Company is assessed a civil penalty in the amount of \$1,000 for violation of Iowa Code chapter 478. Payment is due within 30 days of this order.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 15th day of September, 2004.